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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RAFAEL MALDONADO, Defendant and Appellant.	B287474 (Los Angeles County Super. Ct. No. SA091894)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kathryn A. Solorzano, Judge. Affirmed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey, William H. Shin, and Charles Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.

Rafael Maldonado (appellant) was convicted of discharging a firearm in a grossly negligent manner. (Pen. Code, § 246.3, subd. (a).)[1] Imposition of sentence was suspended. Appellant was placed on formal probation for 60 months under the condition that he serve 92 days in jail. He was given credit for 92 days in custody. On appeal, he alleges there was insufficient evidence to prove he intentionally discharged his firearm. We affirm the judgment.

FACTS

Prosecution Case

Gunshot Incident

On December 2, 2015, W.T. and S.L. were working in an office located in the Skyview Center near Los Angeles World Airport. They heard a gunshot. After waiting five or 10 minutes, they went into the hallway. There, they saw a bullet hole in the wall about seven feet above the ground. In addition, they saw a shell casing on the floor.

Appellant walked around a corner. He was wearing shorts and a dark jacket, and he had a bag. S.L. told appellant to leave the building because there was an active shooter. Appellant looked dazed and did not respond. He looked at the shell casing

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[1] All further references are to the Penal Code unless otherwise indicated.

Section 246.3, subdivision (a) provides: "Except as otherwise authorized by law, any person who willfully discharges a firearm in a grossly negligent manner which could result in injury or death to a person is guilty of a public offense and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170."

and then bent down to pick it up. S.L. told appellant, "Don't touch that. It's evidence."

W.T. exited the Skyview Center and stood with a security guard. Appellant walked out of the building. The security guard said, "That's him. That's him. That's the guy." Appellant went into the parking garage. A short while later, he exited the garage without his bag and reentered the Skyview Center.

Appellant's Arrest; Search of Appellant's Vehicle

W.T.'s coworker called 911.

Police responded to the incident, and an officer arrested appellant. After conducting a pat down search, the officer recovered a fanny pack that contained a wallet, key chain, utility knife, a set of Allen wrenches, and two 10-round capacity magazines for a Sig Sauer .357 magnum handgun. Inside the wallet were a DFG.CA.GOV card and a handgun safety certificate that had been issued to appellant.

Another officer photographed the shell casing found on the ground. He testified that the casing was a "Double Tap" inscribed with ".45 Auto."

In the trunk of appellant's car, a third officer found a bag, which was partially unzipped. It appeared "fairly new" and had no damage except for a bullet hole. The officer looked inside the bag and found a Kriss Vector .45 caliber semiautomatic firearm with a laser sight and a scope. The laser sight was on and the safety mechanism was off. The gun was unloaded. Underneath a blanket in the trunk, the officer found a second gun, an unloaded Sig Sauer P-226. He proceeded to search the rest of the car. In the glove compartment, the officer found two 10-round Sig Sauer P26 Equinox magazines.

At the police tow yard, the arresting officer once again searched appellant's car. Behind a headlight in the engine compartment, the officer found .45 caliber ammunition loaded in a 27-round magazine that was compatible with appellant's Kriss Vector.

Expert Testimony

The prosecution presented testimony by three experts to prove that appellant discharged the Kriss Vector intentionally rather than accidentally.

Annette Woiwode (Woiwode) testified that she was a Los Angeles Police Department criminalist assigned to firearms analysis. She examined the Kriss Vector and determined that it fired properly, and also that the safety mechanism, when engaged, prevented the trigger from being pulled. According to Woiwode, pulling the trigger required four pounds of force. On cross-examination, she testified that the Kriss Vector could be loaded by inserting a cartridge directly into the chamber. A magazine was not required. She agreed that when the gun's charging handle was closed, no one could see whether a cartridge was in the chamber.

Sergio Barot testified that he was a Los Angeles Airport Police Officer and had been a firearms instructor since 2011. There are four rules of firearm safety: treat all firearms as if they are loaded; never point a firearm at anything that you do not intend to shoot; keep your finger off the trigger until the firearm's sights are aligned with the target and you are ready to fire; be sure of your target, the background, and beyond.

Officer Barot testified that the 27-round high capacity magazine fit properly in the Kriss Vector, and that the magazine could have been ejected using a narrow tool such as either of the

two Allen wrenches discovered in appellant's possession. Officer Barot explained that with the magazine inserted into the Kriss Vector, he could insert the weapon into appellant's bag with the muzzle pointed toward the hole, and he could zip the bag shut. He concluded that the only way the firearm could have ejected the shell casing outside the bag was if the bag had been open. The shell casing would have stayed in the bag had it been zipped.

Officer Barot set the Kriss Vector's trigger so it was capable of firing and struck the gun's back end three times with a rubber mallet. It did not fire. He then used the mallet to strike the left and right sides of the trigger mechanism three times each side. The Kriss Vector still did not fire. Officer Barot then proceeded to verify that the Kriss Vector was still in working order and capable of firing.

On cross-examination, Officer Barot conceded that he did not strike the firearm with a round in the chamber nor test the firearm by dropping it from a height. From what he understood, he agreed that the Kriss Vector would not fire if it did not have a magazine. He testified that based on the damage to the wall, the gun would have had to be pointing upward when fired.

Jacob Montgomery (Montgomery) testified that he was a design engineer at Kriss USA. At the time of trial, there were approximately 30,000 Kriss Vectors in circulation. The company had not received any reports of accidental discharges. When a Kriss Vector is shipped, it comes with an owner's manual, safety slip, and gun lock. The safety slip warned the owner to read the owner's manual before using the gun. The owner's manual lists the four basic rules of firearm safety.

Montgomery examined appellant's Kriss Vector and opined that it was working properly. Appellant's gun had an external

safety mechanism that had to be pushed forward into firing position to enable a person to pull the trigger. Also, the gun had an internal spring that kept the firing pin and round separated unless that hammer fell. Montgomery testified that shaking the gun inside a bag would not cause the gun to fire because the internal spring would push the firing pin away from the round.

As part of his consultation on the case, Montgomery did calculations to determine when and if the Kriss Vector would discharge if it was dropped. He assumed that the firearm was dropped to the ground on its butt at a 60-degree angle from approximately three and a quarter feet high. He calculated that its trigger would not accidentally engage unless it accelerated to the ground at 68.3 times the force of gravity. A cell phone dropped from a height of three and a quarter feet would accelerate to the ground with twice the force of gravity. Montgomery concluded that an accidental discharge from dropping the gun was very improbable.

On cross-examination, Montgomery testified that appellant's Kriss Vector firearm could be fired without a magazine. He opined that the shell casing would not have been ejected from the bag if the zipper had been closed. He conceded that Kriss USA could not entirely eliminate users from mishandling guns, and that an object small enough to fit into the firearm's trigger guard could have caused the trigger to be pulled. He discounted the idea that a small object pulled the trigger because he was told the Kriss Vector was found alone in a compartment in the bag.

Defense Case

Appellant rested without offering evidence.

DISCUSSION

I. Standard of Review.

When presented with a challenge to the sufficiency of the evidence to support a criminal conviction, we view "the facts adduced at trial in full and in the light most favorable to the judgment, drawing all inferences in support of the judgment. [Citations.]" (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We then determine whether any rational trier of fact could have found beyond a reasonable doubt that the evidence established the elements of the crime. (*Ibid*.)

II. Section 246.3, subdivision (a).

To convict a defendant under section 246.3, subdivision (a), a prosecutor must prove that he (1) unlawfully discharged a firearm; (2) did so willfully, and (3) did so in a grossly negligent matter which could result in the injury or death of a person. (*People v. Ramirez* (2009) 45 Cal.4th 980, 986.) "Willfully" means "that the prohibited conduct [was] performed purposefully or intentionally." (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1438–1439.) Notably, a defendant's discharge of a firearm is not willful if he held an honest belief that the gun was empty. (*Id*. at p. 1440.)

III. Analysis

Appellant contends that there was insufficient evidence to prove that he intentionally fired the gun because there was no evidence showing what caused the gun to discharge; the prosecution's case was based primarily on expert testimony; the gun was not tested while loaded; there was no testimony as to the impact needed to cause Double Tap ammunition to explode; Montgomery's calculations were hypothetical and theoretical; the experts ruled out certain causes of the gun discharging but not all

possible causes; and the jury convicted based solely on speculation that appellant intentionally pulled the trigger knowing the gun was loaded.

As we discuss below, the evidence was sufficient to support appellant's conviction.

First, appellant's suspicious behavior was circumstantial evidence of his intent to fire the gun. (See *People v. Dick* (1968) 260 Cal.App.2d 369, 371 [culpable state of mind suggested because, inter alia, defendant fled from the scene and hid incriminating evidence].) After the shooting, S.L. told appellant to leave because there was an active shooter in the building. Appellant appeared dazed. He then attempted to pick up the shell casing and only desisted when admonished by S.L that it was evidence. Appellant left the scene, walked to the parking garage and concealed the bag containing the Kriss Vector in his trunk. He went to extraordinary lengths to hide the Kriss Vector's magazine, which he placed in the engine compartment behind a headlight.

Second, appellant's experience and the state of the Kriss Vector were circumstantial evidence of his knowledge that the weapon was loaded and of his intent to fire. He had a safety certificate, which indicated that he knew how to operate firearms and carry them safely. He had Allen wrenches, which could be used to eject the magazine and indicated sophisticated knowledge of the Kriss Vector. Montgomery testified that the Kriss Vector came with a pamphlet containing the four basic rules of firearm safety. These rules admonished the user to treat all firearms as if they were loaded. Appellant's Kriss Vector was found with its safety mechanism disengaged, meaning that the gun would fire if its trigger were pulled. The laser sight was on when the police

found the gun. A reasonable jury could have concluded that appellant knew how to engage the safety mechanism but disengaged it and turned on the laser sight because he intended to use the weapon. (See *People v. Barton* (1995) 12 Cal.4th 186, 203 [jury could discount claim that defendant fired a gun accidentally because, inter alia, he was an experienced marksman].) A jury could have concluded that a person with appellant's knowledge knew how to load a gun, and knew it was in fact loaded.

Third, the shell casing recovered from the scene indicated that the bag was unzipped when the Kriss Vector was fired. If the bag had been zipped, the shell casing would have ended up inside the bag. The implication is that appellant's hand was in the bag when the gun discharged. Thus, the jury could have inferred that appellant had his hand on the gun, and that he pulled the trigger.

Fourth, the prosecution's expert testimony was substantial and persuasive evidence that the Kriss Vector did not fire accidentally. Woiwode determined that appellant's firearm required about four pounds of pull in order to discharge. Officer Barot struck appellant's firearm with a rubber mallet to test whether the firearm could have discharged accidentally through blunt force; the gun did not fire. And Montgomery conducted a hypothetical "drop test" on appellant's firearm and testified that it was highly unlikely to discharge accidentally by being shook within a bag or dropped on the floor. Moreover, there were 30,000 Kriss Vectors in circulation and no reports of accidental discharges. This evidence suggested that the Kriss Vector was not accidentally discharged.

From all this evidence, the jury could have inferred beyond a reasonable doubt that appellant intentionally discharged the Kriss Vector.

DISPOSITION

The judgment is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT